

PUBLIC NOTICE



US ARMY CORPS
OF ENGINEERS

OMAHA DISTRICT

APPLICANT: GENERAL PUBLIC
APPLICATION NO: 199621008, AMENDMENT NO. 4
FLOOD PROTECTION/
RECONSTRUCTION/REPAIR
WATERWAY: SOUTH DAKOTA WATERWAYS
ISSUE DATE: February 5, 2013
EXPIRATION DATE: March 6, 2013

Regulatory Office, 28563 Powerhouse Rd, Room 118, Pierre, SD 57501
<http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/SouthDakota.aspx>

30 DAY NOTICE

JOINT NOTICE OF PERMIT PENDING

US ARMY CORPS OF ENGINEERS
AND
SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

In accordance with Title 33 CFR Section 325.2(e)(2), Section 325.3(b) and Section 325.5(c), published November 13, 1986, in the Federal Register, Volume 51, Number 219, the Corps of Engineers, Omaha District, proposes to re-issue Regional General Permit 96-08 authorizing the discharge of dredged or fill material in association with flood protection and repair work in the State of South Dakota.

General Permit 96-08 will expire on March 31, 2013. The District Commander, Omaha District proposes to re-issue this Regional General Permit for a period of five (5) years. The General Permit will continue to authorize work in waters of the United States (including rivers, lakes, streams and wetland areas) associated with flood protection, reconstruction and repair activities in South Dakota, excluding segments of the Missouri River National Recreation River from river mile 753.60 (Ponca Sate Park, Nebraska) to mile 811.05 (Gavins Point Dam) and from mile 841.00 (near Running Water, South Dakota) to mile 880.00 (Fort Randall Dam). The coverage area of the General Permit has been expanded to include waters in western South Dakota.

This General Permit will authorize, but is not limited to, the following types of activities: repair and reconstruction of existing roads, temporary levee construction, levee repair, breach closures, bridge embankment repair, protection and/or repair of utility structures, placement of suitable rock and/or earth fill for bank protection, and restoration of river channels to the alignment which existed immediately prior to flooding.

Pre-construction notification, as described in Appendix A, is required for a proposed project to be considered under this Regional General Permit. Any authorization granted under this General Permit would be subject to the attached proposed Special Conditions.

For any proposed activity that the District Commander determines to have more than minimal adverse environmental effects, individually or cumulatively, or would be contrary to the public interest, he may require the processing of an individual permit.

The South Dakota Department of Environment and Natural Resources, Division of Environmental Regulation, 523 East Capitol Avenue, Pierre, South Dakota, 57501-3181, will review the proposed General Permit for state certification in accordance with the provisions of Section 401 of the Clean Water Act. The certification, if issued, will express the State's opinion that the operations undertaken by the applicant will not result in a violation of applicable water quality standards. The South Dakota Department of Environment and Natural Resources hereby incorporates this public notice as its own public notice and procedures by reference (ARSD 74:03:02).

The United States Environmental Protection Agency (EPA), Region 8, Wetlands and Tribal Unit, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, will review the proposed General Permit for certification on Tribal Lands in accordance with the provisions of Section 401 of the Clean Water Act. The certification, if issued, will express the EPA's opinion that the operations undertaken by the applicant will not result in a violation of applicable water quality standards.

The Corps of Engineers will comply with the National Historic Preservation Act of 1966 and 36 CFR 800. We will check the National Register of historic Places and "its current supplements." Activities undertaken pursuant to this General Permit will be reviewed individually in accordance with Section 106 of the National Historic Preservation Act.

Pursuant to the Endangered Species Act, projects proposed under this General Permit will be reviewed for impacts to threatened and/or endangered species and their critical habitat. If an individual activity proposed for authorization by this General Permit involves a species designated as threatened or endangered or adversely affects critical habitat, the Corps will contact the U.S. Fish and Wildlife Service before completing the permit determination.

The decision whether to re-issue the General Permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activities on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the activities will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production, and, in general, the needs and welfare of the people. In addition, the evaluation of the impacts of this General Permit on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under authority of Section 404(b) of the Clean Water Act (40 CFR Section 230).

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials, Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activities. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition, or deny issuance of the General Permit. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an environmental assessment and/or an environmental impact statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activities.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this General Permit. Requests for public hearings shall state, with particularity, the reason for holding a public hearing. The request must be submitted to the **US Army Corps of Engineers, South Dakota Regulatory Office, 28563 Powerhouse Road, Room 118, Pierre, South Dakota 57501.**

Any interested party (particularly officials of any town, city, county, state, or federal agency, or local association whose interests may be affected by this proposed General Permit) is invited to submit to this office, written facts, arguments, or objections on or before the expiration date of this notice. Any agency or individual having an objection to the proposed General Permit should specifically identify it as an objection with clear and specific reasons. Comments, both favorable and unfavorable, will be accepted, made a part of the record and will receive full consideration in subsequent actions on this permit application. All replies to the public notice should be addressed to the address listed in the previous paragraph. Nathan M. Morey, telephone number (605) 224-8531, may be contacted for additional information.

Comments received after the close of the business day on the expiration date of this public notice will not be considered.

This General Permit, if authorized, will be under the provisions of Section 10 of the Rivers and Harbors Act of March 3, 1899 (30 Stat. 1151; 33 USC 403), and under the provisions of Section 404 of the Clean Water Act.

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Special Conditions:

1. The time limit for completing the work authorized is 120 days from each permit determination. If additional time will be needed to complete the authorized activity, a written request for a time extension must be submitted to the Corps of Engineers.
2. This Regional General Permit authorizes the discharge of dredged or fill material and other work associated with flood protection measures and restoration, repair or reconstruction measures performed in waters of the United States within the State of South Dakota as a result of damages caused by flooding. The work will be limited to that authorized by the Corps of Engineers through the issuance of this General Permit. Work associated with restoration, repair or reconstruction will be limited to that necessary to restore damaged areas to pre-flood conditions.
3. All channel restoration work will be limited to restoring the area to pre-flood conditions. Channel restoration of areas not caused by flooding is not authorized under this General Permit.
4. Repair and protection measures authorized herein do not allow for the construction of structures (e.g. jetties) which would result in any further stream channel constriction or in the redirection of flows in such a way as to cause upstream or downstream erosion, etc. Nor does this Regional General Permit authorize any repair work on such structures that would result in the structure being modified or extended beyond its original dimensions. Protection measures (e.g. raise and widen flooded roadways, riprap protection of road inslopes, etc.) are authorized herein.
5. Repair measures authorized herein do not allow for improved drainage of legally drained wetlands or new, permanent drainages that would result in the lowering of basin water retention capacity and/or impacts to the wildlife value of that wetland.
6. Temporary levees, accesses, and other fills must involve the least damaging and minimum amount of disturbance/impacts to waters of the United States. Appropriate measures must be taken to maintain near normal downstream flows to minimize flooding.
7. All temporary and permanently placed fill material must be clean material free of contaminants that may be toxic to aquatic life. The material shall be placed and protected in such a manner that it will not be eroded by stream currents and expected high flows.
8. All fill material must be obtained from a non-wetland, upland source.
9. All temporary fills, including sandbags, in waters of the United States must be completely removed and the area restored to pre-project conditions within 30 days of the end of flooding conditions.
10. The use of small aggregate, such as streambed material, for bank stabilization and erosion control is prohibited.
11. All earth fill material associated with bank erosion protection and repair must be stabilized with vegetation and appropriate erosion protection material(s) and measures must be taken to confine the material placement to the fill site by utilizing comprehensive and effective erosion control methods, which will be monitored and maintained until the site is permanently stabilized.

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Special Conditions (cont'd):

12. Only clean riprap materials will be utilized in order to avoid the percolation of fines that would result in excessive local turbidity.

Note: There is a vast range in types of materials that could potentially be used for erosion protection. The Natural Resources Conservation Service (NRCS) can be contacted for native plant information. Many biodegradable products are available to reinforce the soils and bankline during the initial plant growth. Information on the erosion control methods and materials and links to manufactures can be found at www.IECA.ORG (International Erosion Control Association).

13. All areas along the bank disturbed or newly created by the construction activity, which will not be ripped or otherwise stabilized with approved protection measures, will be seeded with vegetation both in kind and in quantity (this will include both the herbaceous and woody species) that are indigenous to the area for protection against subsequent erosion and to minimize adverse impacts to fish and wildlife resources.

14. The clearing of vegetation, including trees located in or immediately adjacent to waters of the United States, will be limited to that which is absolutely necessary for construction of the project. The removal of mature trees will be avoided to prevent potential impacts to bald eagle roost sites.

15. All construction debris will be disposed of on an approved upland site in such a manner that it cannot enter a waterway or wetland. The permittee will establish and carry out a program for immediate removal of debris during construction in order to prevent the accumulation of unsightly, deleterious and/or potentially polluted materials.

16. Equipment for handling and conveying materials during construction will be operated to prevent dumping or spilling the materials into the water except as approved herein.

17. All dredged or excavated materials, with the exception of that authorized herein, will be placed on an upland site above the ordinary high water line in a confined area, not classified as a wetland, to prevent the return of such materials to the waterway.

18. Concrete trucks will be washed at a site and in such a manner that washwater cannot enter the waterway or other waters of the U.S.

19. During construction, no petroleum products, chemicals, or other deleterious materials shall be allowed to enter or be disposed of in such a manner so that they could enter the water and that precautions be taken to prevent entry of these materials into the water.

20. All work in the waterway will be performed in such a manner so as to minimize increases in suspended solids and turbidity that may degrade water quality and damage aquatic life outside the immediate area of operation.

21. All earthwork operations on shore will be carried out in such a manner that sediment runoff and soil erosion to the waterbody do not occur.

22. If and when the District Commander has been notified that a dredging or filling activity is adversely affecting fish or wildlife resources or the harvest thereof and the District Commander subsequently directs remedial measures, the permittee will comply with such directions as may be received to suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect as required.

23. The use of machinery in the waterway will be kept to a minimum.

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Special Conditions (cont'd):

24. A discharge of material may not occur in the proximity of a public water supply unless appropriate approval is given and mitigation measures are identified to offset any adverse effects.

25. If the Corps of Engineers is notified that work being performed does not comply with, or fall within the scope of, this Regional General Permit, the responsible party will take immediate steps, as directed by the Corps of Engineers, to bring the work into compliance with this permit.

26. If any historical, archeological, architectural, or other cultural artifacts, vestiges, or remains are found prior to, during or after any earth disturbance activities in the proposed project area, the permittee shall immediately cease construction and notify the District Engineer of the find.

27. If any threatened or endangered species are sighted at or near the project site, particularly during construction, work must cease and the U.S. Fish and Wildlife Service contacted immediately.

Note: If an activity proposed for authorization will occur in the known proximity of a species designated as threatened or endangered or will adversely affect the critical habitat of such species, the Corps of Engineers will consult with the U.S. Fish and Wildlife Service before completing the permit determination. No activity will be authorized which would knowingly jeopardize a threatened or endangered species or destroy or adversely modify the critical habitat of such species.

28. The District Commander may require additional special conditions (including mitigation requirements) be included in any authorization issued under this Regional General Permit to avoid or minimize adverse environmental impacts. The processing of an individual permit may also be required for any activity determined to have more than minimal adverse environmental effects (individually or cumulatively) or the probability to be contrary to the public interest.

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Appendix A

Pre-Construction Notification

All interested parties proposing work under this General Permit are required to contact the Corps of Engineers at the South Dakota Regulatory Office, 28563 Powerhouse Road, Room 118, Pierre, South Dakota 57501 in advance so that a determination can be made that the work is necessitated by flood conditions. The Corps of Engineers will verify (on-site verification, if necessary) that flood damages are probable or that damage has occurred from recent flooding (i.e., determine the applicability of this RGP to the permit application under review). The following information is required:

1. Name, address, and telephone number of the applicant responsible for the work and the owner of the affected land, if other than the applicant.
2. A written description of the work including the purpose and need: type, composition, and quantity of material to be discharged or excavated; length, width and depth of fill material and/or excavation area; disposal site for excavated material; equipment to be used; and any other pertinent, supporting data. Drainage projects must identify the receiving site for the excess water.
3. Names, addresses, and telephone numbers of adjacent property owners.
4. A location map with the exact location of the proposed work and a legal description.
5. A drawing on 8 1/2 by 11-inch paper with details of the proposed work showing:
 - a. The project location, including the disposal site locations. A photocopy excerpt from a USGS quadrangle, road map, or equivalent is acceptable.
 - b. Plan and cross-sectional views showing elevation (relative) and dimensions.
6. If applicable, a mitigation plan for all proposed wetland fill activities.

The information submitted must clearly describe the work and the purpose and need for the work so the Corps of Engineers can determine whether or not the work complies with the terms, conditions, and limitations of this General Permit.

No project may proceed until notification approval has been received from the Corps of Engineers that the proposal meets the General Permit criteria.